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ISSUE DEFINITION

There are many issues connected with Canadian refugee policy. The focal point of this study is the historically close association of an essentially humanitarian concern - the treatment and resettlement of those who cannot return to their homelands for one reason or another - with a basically self-interested or pragmatic concern - immigration policy. It is indisputable that there should be some connection between the two concerns; at issue is the degree of this connection and the extent to which the criteria of immigration policy should be applied to the selection of refugees abroad for resettlement in Canada. (The issue of the determination process in Canada for the status of "Convention" refugees is dealt with in Current Issue Review 86-26E.)

BACKGROUND AND ANALYSIS

Two problems arise in analyzing the degree of association between immigration policy and refugee policy. First, until recently there has never been a debate on the whole field of refugee policy as distinct from immigration policy - the White Paper of 1966 and the Green Paper of 1974 concentrated on refugee policy as a form of humanitarian classification for immigrant eligibility. Second, refugee policy has evolved essentially in a *de facto* and *ad hoc* fashion in response to specific refugee emergencies, criticisms of the handling of refugees, and public opinion. Thus, the association can only be established through a study of past refugee flows and immigration policy.

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A. The Evolution of "Humanitarian Immigration"

It can be said that until 1947 Canada had only an immigration policy. No records distinguished between the admission of normal immigrants and that of refugees because all had to meet the same criteria. Provided their origins were European and they were medically and physically fit, up to the outbreak of World War I refugees benefited from the lack of a separate policy which meant there were few restrictions on immigration. This situation changed dramatically in the 1920s and 1930s, however, when an extremely restrictive immigration policy was implemented as a result of high unemployment following the war and during the Great Depression. Throughout this period, Canadian governments avoided the creation of a purely humanitarian classification for immigrant eligibility: exceptions were made, but only on a case-by-case basis.

Shortly after World War II, Canada began to return to a more liberal attitude toward the admission of refugees, provided they could meet immigration criteria. But the years 1949-1975 also saw the cautious *ad hoc* evolution of a much more distinct refugee policy; the needs of refugees who could not meet criteria for normal immigration began to receive consideration and the need of refugees for resettlement on occasion took precedence over the conditions of the Canadian labour market.

1. Speech of Prime Minister King: The Origin of Humanitarian Immigration; the Impact of the Hungarian Revolution

The postwar change in immigration policy was heralded by a speech of Prime Minister King to the House on 1 May 1947. In it he announced for the first time that immigration policy would "take account of the urgent problem of the resettlement of persons who are displaced and homeless". He was careful to note, however, that the flow of refugees and displaced persons would be geared to the needs of industry, that every effort would be made to ensure that those admitted would make good citizens, and that immigration would not fundamentally alter the character of the Canadian population. This was the origin of what one might call humanitarian immigration - priority consideration for refugees from among those prospective immigrants who met the criteria for the status of landed immigrant.

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The brutal Soviet reoccupation of Hungary in 1956 following the Hungarian Revolution led to a temporary divorce between refugee procedures and those for normal immigration. Within weeks of the November invasion, Austria and Yugoslavia were inundated by 200,000 refugees. Intense public and parliamentary pressure encouraged the Canadian government to adopt a policy of unrestricted entry for these people. Within less than ten months, 36,718 Hungarians arrived in Canada where governmental and non governmental agencies assisted them in finding accommodation and employment and in integrating themselves into Canadian society.

The success of the Hungarian refugee resettlement program marked a watershed in Canadian refugee policy. Thereafter, the Canadian government found it increasingly difficult to insist that refugees fully meet immigration regulations and to resist pressure for a more humanitarian policy vis-à-vis at least limited numbers of refugees. The first to benefit from the Hungarian precedent were a number of hard core refugees suffering from tuberculosis. In 1959 the government announced that the Canadian contribution to World Refugee Year would be to admit about 100 tubercular refugees and their dependents, and to pay the costs of hospitalization and resettlement. The success of the initial program led not only to the admission of an additional 200 patients but also to a change in the official Canadian attitude which enabled thousands of other refugees to settle under special provisions.

2. The White Paper of 1966: Statutory Recognition of Refugee Flows, "Relaxed" Immigration Standards Recommended

Until the mid 1960s, Canadian immigration policy discriminated in favour of Europeans, though the centre of the world's refugee problem had shifted to Africa and Asia. Reform began with the publication of a White Paper in 1966 which recommended that if Canada was to "accept its fair share of international responsibility for refugees, including the sick and the handicapped, more formal arrangements than now exist are required including the annual appropriation of funds on a continuing basis". It was further recommended that immigration regulations be relaxed when they impeded the admission of certain classes of refugees.

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Although new legislation was not forthcoming for another 10 years, the remaining geographically and racially discriminatory immigration regulations were changed in 1967; two years later, Canada finally acceded to the 1951 Convention relating to the Status of Refugees and its Protocol. This paved the way for a much more humanitarian and universal selection of refugees for resettlement in Canada. At the same time, the inauguration in 1967 of a point system based on unemployment rates, job availability, education, age, etc., for determining the admissibility of immigrants made a more formal separation of refugee and immigration policy all the more essential.

B. Public Debate During the Revision of the *Immigration Act* and Thereafter

Debate about the objectives of refugee policy played a role in the general debate about the principles and objectives that should be implanted in a new *Immigration Act* and its regulations. The Green Paper formally entitled *Canadian Immigration and Population Study* was published in late 1974 as a discussion document.

In terms of the development of refugee policy, the paper was something of a disappointment. Throughout, refugee policy was treated as an "aspect" of immigration which, while basically humanitarian in purpose, "also served foreign policy objectives". No options were advanced for the development of a refugee policy, although some of the suggestions for future immigration policy might have had a very profound direct or indirect impact on refugee flows if adopted. Conversely, a generous policy of refugee admissions might have adversely affected a restrictive immigration policy based on the labour market.

The Green Paper did not seem to go as far as the White Paper of 1966 which had suggested that Canada had at least some obligation to accept a share of responsibility for sick and disabled refugees. While acknowledging the need for refugee policy to be flexible, the Green Paper did not outline the form this flexibility might take, such as the admission of refugees as other than landed immigrants, or the development of separate criteria for selecting refugees. It did, however, recommend that the new

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Act contain statutory recognition of refugee status and of the protection owed refugees under the 1951 Convention and its Protocol.

A Special Joint Committee of the Senate and the House of Commons was formed in March 1975 to consider the issues raised by the Green Paper and the views of the public. The contemporaneous Chilean refugee experience focused attention on the inherent conflict between a possible coherent and humanitarian refugee policy and the normal immigration policy. Canadian refugee policy has traditionally been defended, as it was during the hearings of the Special Joint Committee, on the grounds that Canada is one of the very few countries prepared to admit relatively large numbers of refugees as permanent residents and to offer them full citizenship and participation in society. Also, it was pointed out, because immigration is a shared field constitutionally, the federal government cannot without provincial consent admit large numbers of refugees who may require surveillance, long-term treatment, or support.

The major criticism of a too intimate connection between refugee and immigration policy has always been humanitarian - simply put, it has been argued that the attitudes, motivation, standards and procedures that may be necessary requirements for normal immigration can be inhumane when applied to refugees. Organizations representing those involved in refugee relief have testified that refugees are not voluntary migrants - they are driven to seek refuge and to accept resettlement by factors beyond their control, most frequently the fear or reality of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion.

To fulfil the humanitarian obligation to such people, even "relaxed" immigration criteria might not be sufficient. Needed were entirely different criteria, which might even be the opposite of those applied for normal immigration. Among the refugee criteria suggested were: the degree of physical danger posed to the refugee; whether the refugee was in peril of his or her life; the number of innocent dependents also suffering as a result of the persecution of the head of the family; the assessment of the United Nations High Commissioner for Refugees or other

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international refugee organization as to the urgency of granting the refugee immediate entry to Canada, etc.

Refugee and human rights organizations also urged the government to let Canada become a country of first asylum without giving up its custom of accepting refugees as landed immigrants. This would help relieve the burden on countries adjacent to a refugee crisis and reduce the temptation to concentrate selection on the most desirable applicants. It would involve the adoption of a new status for entry into Canada in addition to that of landed immigrant. Without being obliged to accept the refugee as an immigrant, Canada could protect the refugee from deportation until another country of resettlement had been found or until conditions in the country of origin had changed sufficiently to permit return. The offer of right of indefinite residence could be accompanied by conditions deemed essential to protect vital Canadian interests, such as national security or relations with a friendly power.

Existing procedures for protecting Canadian security and preventing the entry and continued residence of criminals in the country were felt to be unnecessarily harsh and/or vague even in the case of normal immigration. When applied heavy-handedly to refugees, it was said they could cause suffering and possible loss of life as well as become the basis of ideological discrimination. Other witnesses, however, felt that the circumstances of some refugee flows, particularly those from Latin America made it very difficult for the authorities to complete adequate security screenings to filter out criminals, communists, terrorists, political dissenters or militants. This, it was feared, might eventually compromise the whole refugee effort in the eyes of the public.

The Report of the Special Joint Committee was tabled in late 1975. In concluded that a clear statement of refugee policy was necessary to "guarantee fair and equitable treatment of claimants to refugee status" but recommended that statutory provisions allow for flexibility of response. In more specific terms it recommended that:

i) a broader definition of "refugee" be adopted than that in the 1951 Convention, but that this definition not include persons suffering from poverty and hunger as a result of natural disaster, famine, or war;

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ii) refugee flows should normally not be included in the government's annual target and that an annual ceiling on the number of refugees permitted entry not be adopted;

iii) the responsible Ministers report to the appropriate Standing Committee on situations with refugee implications and the government's response;

iv) the government not establish a special immigration category of first asylum.

The debate on refugee policy continued during the remaining stages of legislating the *Immigration Act, 1976* and scrutinizing its regulations (1978). The same general issue was at stake - the degree to which refugees should be given separate status and be governed by criteria different from those established for normal immigrants.

C. The Treatment of Refugees under the *Immigration Act, 1976*

Refugee flows received statutory recognition under the legislation adopted in 1976 and effected in 1978. The formal definition of refugee in the legislation is that of the 1951 Convention Relating to the Status of Refugees as amended by the Protocol of 1967. Article 2(1) states in part:

> "Convention refugee" means any person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
>
> (a) is outside the country of his nationality and is unable or, by reason of such fear, is unwilling to avail himself of the protection of that country, or
>
> (b) not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of such fear, is unwilling to return to that country.

Beyond this, the Governor in Council is empowered to designate classes of people, the admission of whom would be "in accordance with Canada's humanitarian tradition with respect to the displaced and the persecuted"

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(Article 6(2)). Convention refugees, like other potential immigrants, can be ruled inadmissible if they have been convicted of a serious criminal offence or if there are reasonable grounds to believe that they will engage in criminal activities. Those who have engaged in or might engage in acts of espionage or subversion are ruled inadmissible as are those who might instigate the subversion by force of any government, engage in acts of violence or participate in organizations which might engage in such acts of violence.

Under the legislation, refugees and designated classes may be exempted from many of the specific criteria that might make an immigrant inadmissible, and the Governor in Council is empowered to prescribe special regulations for their admission. The legislation also provides for the private and group sponsorship of Convention and designated refugees. Private sponsorship has supplemented government sponsorship and greatly enhanced Canada's capacity to resettle and integrate refugees, as the Indo-Chinese refugee movement showed. It has also increased public awareness and support for refugee programs by developing a knowledgeable and interested public constituency.

The regulations stipulate that Convention refugees and those designated by the Governor in Council as a class whose entry would be in accordance with Canada's humanitarian tradition should be given first priority processing, along with the family class. To help determine whether a Convention refugee or member of a designated class will be able to establish himself successfully in Canada, visa officers are to take into consideration the normal criteria for assessing immigrants without assigning points, whether or not the person is sponsored, or whether any other financial or other assistance is available in Canada.

The basic effect of the legislation is to put in statutory form Canada's obligations to protect Convention refugees and to establish a legislative basis for admitting both Convention and non-Convention refugees and displaced persons under "relaxed" standards of immigration. Other than the security requirements, the basic criterion for determining the admissibility of refugees remains their ability to become successfully established in Canada. There is no reference to the relative need of a

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refugee for a country of resettlement, etc. Refugees flows thus have only a degree of independence from general immigration under the legislation.

D. Current Refugee Flows: Significant Developments

Since 1978, the government has exercised its power under paragraphs 114(1)(d) and (e) and designated three classes of persons, the admission of whom would be in accordance with "Canada's humanitarian tradition with respect to the displaced and the persecuted": the Political Prisoners and Oppressed Persons, the Self-Exiled Persons, and the Indo-Chinese classes.

The Political Prisoners and Oppressed Persons designated class, which has replaced the Latin American designated class, is currently restricted to citizens of Chile, El Salvador and Guatemala. To be included in this class, individuals must be in their country of citizenship, be seeking resettlement in Canada and,

> (a) as direct result of acts that in Canada would be considered a legitimate expression of free thought or a legitimate exercise of civil rights pertaining to dissent or to trade union activity, have been
>
> (i) detained or imprisoned for a period exceeding 72 hours with or without charge, or
>
> (ii) subjected to some other recurring form of penal control, or
>
> (b) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group, are unable or, by reason of such fear, unwilling to avail themselves of the protection of their country of citizenship.

The Self-Exiled class included the citizens, former citizens or former residents of the Soviet Union, its European satellites and Albania who are outside Canada and not resident in either the countries mentioned or Yugoslavia. To be eligible, they did not have to establish a "well-founded fear of persecution, etc." This class is in the process of being shut down as no new admissions will be accepted as of 1 September

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1990. For those accepted for government or private sponsorship, transitional measures remained in effect up to 31 August 1990.

The 125,000 refugees admitted to Canada between 1975 and the present as part of the Indo-Chinese designated class represent the largest movement of refugees to Canada since World War II. Included in the class were Vietnamese, Cambodians and Laotians who had left their countries since 30 April 1975 and were unwilling or unable to return. As of 1 September 1990, this class has been limited to Cambodians although transitional measures remain in effect for Vietnamese and Laotians who have already reached a country of first asylum.

PARLIAMENTARY ACTION

Bill C-24, An Act respecting immigration to Canada, was introduced and given First Reading on 24 November 1976 during the 2nd Session of the 30th Parliament. The bill was referred to the Standing Committee on Labour, Manpower and Immigration following Second Reading on 23 March 1977 and was reported with substantial amendments after lengthy proceedings during June and July 1977. It received Third Reading on 25 July 1977, Royal Assent on 5 August 1977 and was proclaimed in force on 10 April 1978.

The *Immigration Act, 1976* requires that the Minister report annually to Parliament on immigration levels planned for future years. The Second Annual Report, tabled on 1 November 1979, introduced the concept of an annual refugee plan, a concept which initially caused a good deal of concern to non-governmental refugee organizations. In a speech of 6 June 1980, the Minister said that the process for developing the annual plan would involve: the circulation of a discussion paper among the provinces and voluntary refugee organizations; consultation with the voluntary groups; preparation of a draft refugee plan; further consultations with both voluntary groups and the provinces; discussion of the plan with the United Nations High Commissioner for Refugees; and Cabinet approval of the resulting plan. The Annual Report for 1981 accepted "most urgent need" as a critical determinant of the selection process, thus partially meeting a

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long-standing complaint. For the first time it included a specific African component to offer refuge to those with handicaps or those judged by the Minister to have "high political profiles".

Government sponsorship of refugees under the annual plans declined from 16,000 in 1981 to 14,000 in 1982 and to 10,000 in 1983 and 1984 before increasing slowly to the current level of 13,000. The sharp drop in the planned intake of refugees re-opened the issue of the link between refugee policy and immigration policy. Non-governmental refugee organizations have objected to the refugee intake's being based on Canadian economic and unemployment criteria, as though refugees were voluntary migrants. Rather, they have argued that the need for countries of resettlement and the urgency of this need should be the fundamental considerations in deciding the number of refugees to be admitted.

The Annual Report on Future Immigration was tabled in October 1990. Once again it provides for no change in the overall number of government-sponsored refugee admissions. In fact, the plan for 1991 may provide for a substantial drop in the number of government-sponsored refugees, because it includes an unallocated reserve of 3,000 whereas the programs of previous years included a small management reserve in the order of 300-400 places. The justification for such a large reserve is that "conditions in a number of areas are becoming more fluid, which may lead to urgent resettlement needs from a wider array of countries next year."

For 1991, most of these reserved places have been taken from the Eastern Europe allotment, but the Latin America allotment has also been reduced - from 3,000 to 2,500. An increase is expected from the countries of Africa - from 1,000 to 1,250 - and from the Middle East and West Africa - from 1,700 to 2,200. The following table sets out the 1991 and 1990 allocation of government-sponsored resettlement places.

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Government-Assisted Refugee Allocations
by World Areas

	1990	1991
South East Asia	3,500	3,500
Latin America	3,000	2,500
Africa	1,000	1,250
Middle East and West Asia	1,700	2,200
Eastern Europe	3,500	550
Reserve	300	3,000
TOTAL	13,000	13,000

In addition, there will be about 2,000 admissions from abroad through special humanitarian programs. These programs deal with people who are not Convention refugees and do not qualify for selection under a Designated Class, but are affected by crises in their countries and wish to join family members in Canada. They are admitted under the Assisted Relative category, and are assessed using relaxed selection criteria for humanitarian reasons. The primary beneficiaries are people from Lebanon, Sri Lanka, Iran, Guatemala and El Salvador.

Throughout the process of adopting a streamlined and tightened-up refugee determination process in Canada, the government has claimed that the heavy volume of claims from within Canada to the status of Convention Refugee would not lead to a lessened commitment to the selection of refugees abroad for resettlement in Canada. However, the Immigration and Refugee Board has been reorganized to process up to 35,000 claims to Convention refugee status annually. At current acceptance rates, 25,000 people would be accepted annually as permanent residents in 1992 through 1995.

Canada's planned commitment, both governmental and privately-sponsored, to resettle refugees for the years 1990-1995 is set out in the following table.

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REFUGEES	ESTIMATED 1990	1991	1992	PLANNED 1993	1994	1995
• Government-Assisted Refugees and Members of Designated Classes (selected abroad)	13,000	13,000	13,000	13,000	13,000	13,000
• Privately-Sponsored Refugees and Members of Designated Classes (selected abroad)	24,000	23,500	20,000	20,000	15,000	15,000
• Refugees landed in Canada (after Jan. 1, 1989)	5,000	10,000	25,000	25,000	25,000	25,000
TOTAL	42,000	46,500	58,000	58,000	53,000	53,000

This plan thus "freezes" admission of government-assisted refugees and designated classes from abroad at 13,000 for the next five years and anticipates a decline from 24,000 to 15,000 in privately-sponsored refugees and designated classes selected abroad. At the same time, successful claimants to refugee status from within Canada will increase from 5,000 to 25,000.

CHRONOLOGY

1874 - First Mennonite refugees arrived in Canada following grant of special rights.

1923 - P.C.O. 183 limited immigration and hence refugee flows to *bona fide* farmers, farm workers, domestics, and close relatives of residents of Canada.

1931- P.C.O. 695 limited immigration and hence refugee flows to those having the means to establish a farm.

1947 - Large-scale refugee flows from Europe to Canada commenced following Prime Minister King's speech of 1 May which recognized a moral obligation to help resettle displaced persons.

1956 - Soviet invasion of Hungary led to resettlement of 36,718 Hungarians in Canada under "relaxed" immigration regulations.

1959-1960 - 300 refugees suffering from tuberculosis and their families admitted to Canada.

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1966 - White Paper on Immigration recommended that legislation provide for relaxation of immigration regulations when they impede flow of refugees.

1968 - Czechoslovakia invaded by the Soviet Union.

1969 - Canada signed the 1951 Convention relating to the Status of Refugees.

1972 - Expulsion of Ugandan Asians led to the first large-scale immigration of non-European refugees to Canada.

1973 - Chilean 'coup' raised controversy over political bias in Canadian refugee policy.

1974 - The Canadian Immigration and Population Study published.

1975 - The Special Joint Committee of the Senate and of the House of Commons on Immigration Policy formed. It held hearings across the country and submitted its Report the same year.

1976 - The *Immigration Act, 1976.* The Act, together with its Regulations, was proclaimed in force on 10 April 1978.

1978 - Mass flight of "boat people" from Vietnam began.

1979 - Second Annual Report to Parliament on Immigration Levels tabled. The Report included an annual refugee plan.

31 October 1981 - Annual Report to Parliament on immigration levels 1981 tabled. It was the first to incorporate a specific African contingent and to recognize "most urgent need".

SELECTED REFERENCES

Adelman, Howard, Editor. *The Indochinese Refugee Movement: The Canadian Experience.* Operation Lifeline, Toronto, 1980.

Canada, House of Commons, Standing Committee on Labour, Manpower and Immigration. *Minutes of Proceedings and Evidence.* 2nd Session, 30th Parliament, Issue No. 29, 1 June 1977; Issue No. 32, 7 June 1977; Issue No. 37, 16 June 1977; Issue No. 39, 21 June 1977; Issue No. 50, 12 July 1977.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

Canada, Employment and Immigration. *The Refugee Status Determination Process*. Supply and Services Canada, November 1981.

Canada, Manpower and Immigration. *Canadian Immigration and Population Study*. Vols. 1-2. Information Canada, Ottawa, 1975.

Canada, Parliament, Special Joint Committee on Immigration Policy. *Report to Parliament, Minutes of Proceedings and Evidence*. 1st Session, 30th Parliament, 1975.

Dirks, Gerald E. *Canada's Refugee Policy: Indifference or Opportunism*. McGill-Queen's University Press, Montreal, 1977.

Howard, Rhoda. "Contemporary Canadian Refugee Policy: A Critical Assessment". *Canadian Public Policy*, Vol. 6, No. 2, p. 361-373.

Wydryzynski, Christopher J. "Refugees and the Immigration Act." *McGill Law Journal*, Vol. 25, No. 2, p. 154-192.